

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

PAMELA ANN MUGHANNAM,

Plaintiff,

vs.

Case No. 2005-3094-NI

LOUIS ALBERT STEFANI,

Defendant.

OPINION AND ORDER

Defendant moved for Summary Disposition under MCR 2.116(C)(10).

Plaintiff filed this vehicle-pedestrian negligence action on August 3, 2005.

According to Plaintiff's complaint on February 20, 2005 the Defendant tortiously and carelessly drove his vehicle, backing into Plaintiff as she was entering a parked vehicle outside of Randazzo's Fruit Market. Plaintiff alleges she sustained serious impairment of a body function resulting in long term disability from her employment in a secretarial position. Since the commencement of this action, Plaintiff was involved in another motor vehicle accident on December 6, 2005 that contributed additional injuries and an exacerbation of existing medical conditions.

In the motion for summary disposition, Defendant argues that Plaintiff's alleged injuries fail to meet the threshold of serious impairment of a body function as required by MCL500.3135. As used in this statute, a serious impairment of body function is, "an objective manifestation of an important body function that affects a person's general



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ability to lead his or her normal life.” MCL 500.3135(7). In addition, for an impairment to qualify as objectively manifested there must be a medically identifiable injury or condition with a physical basis. Defendant alleges that the medical records and physician evaluations do not support Plaintiff’s claim of cervical or lumbar radiculopathy. Defendant argues that the final diagnosis of the February 21, 2005 accident was lumbar strain, which was resolved prior to the December 5, 2005 accident.

Plaintiff disputes that the injuries sustained from the vehicle-pedestrian accident with Defendant resulted in injuries that meet the serious impairment threshold. Plaintiff alleges that the medical records reflect a medically identifiable disc injury that resulted in work disability. The work disability prevents Plaintiff’s ability to lead a normal life; therefore the injury satisfies the serious impairment threshold. In addition, Plaintiff requests this Court deny Defendant’s motion for summary disposition and enter an order pursuant to MCR 2.116(I)(2), granting summary disposition in favor of Plaintiff.

In a motion brought under MCR 2.116(C)(10), the record is considered in a light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists that precluding granting judgment as a matter of law to the moving party.

*Laser v Kitchen*, 266 Mich App 483, 486-487; 702 NW2d 199 (2005). Once the moving party has met the initial burden by supporting its position with documentary evidence, the burden shifts to the non-moving party to establish the existence of a genuine issue of fact.

*Pena v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003). A genuine issue of fact exists when the record leaves open an issue on which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Under MCL 500.3135(1), a person is subject to tort liability for noneconomic loss caused by his or her "use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." *Moore v Cregeur*, 266 Mich App 515, 517; 702 NW2d 648 (2005). In *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), the Michigan Supreme Court presented a multi-step process to help lower courts determine if a plaintiff meets the statutory threshold of "serious impairment of body function". The first step is to determine whether a factual dispute exists "concerning the nature and extent of the person's injuries; or if there is a factual dispute, that it is not material to the determination whether the person has suffered a serious impairment of body function." *Id* at 131-132. If there is a material factual dispute regarding the nature and extent of the injuries, the court may not decide the issue as a matter of law. MCL 500.3135(2)(a)(i).

The Court is satisfied summary disposition, for either party, is not appropriate at this time. There is a factual dispute concerning the nature and extent of Plaintiff's injuries. This dispute is material to the determination as to whether Plaintiff has suffered a serious impairment of a body function. Both parties provide expert testimony from board certified neurological surgeons with conflicting professional opinions. In addition, Plaintiff's involvement in a subsequent vehicle accident further complicates the core medical issues. This Court cannot decide as a matter of law that Plaintiff suffered a serious impairment of a body function. There is a genuine issue of material fact regarding the nature and extent of Plaintiff's injuries that must be submitted to the trier of fact.

Therefore, for the reasons set forth above, Defendant's Motion for Summary Disposition is DENIED. Further Plaintiff's request for relief under MCR 2.116(I)(2) is

also DENIED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the claim and does not close the case.

IT IS SO ORDERED.



JAMES M. BIERNAT, Circuit Judge

JMB/kmv

DATED: June 21, 2006

cc: Harold A. Perakis, Attorney at Law

Stuart G. Eavenson, Attorney at Law